Eternal Wellness Sdn Bhd & Anor v Derrick Ng Keng Lin & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCvC)(A)-2337–12 OF 2021
HAS ZANAH MEHAT, CHE MOHD RUZIMA AND SEE MEE CHUN JJCA
30 NOVEMBER 2022

Tort — Detinue — Refusal to return property — Plaintiffs entered into joint-venture business with defendants pursuant to which plaintiffs placed their goods at defendants' premises to start off the business with minimal costs — Whether when joint-venture ended plaintiffs were entitled to take back their goods — Whether defendants had no right to detain the goods or prevent plaintiffs from entering the business premises to take them back — Whether plaintiffs upon satisfying court that they were the rightful owners of the goods were entitled to mandatory injunction compelling owner of premises where the goods were stored to return them

The appellants agreed to go into a joint-venture business, on an equal profit-sharing basis, with the second respondent ('R2') by opening a clinic and wellness centre at premises ('the premises') owned by the third respondent ('R3') in which the first respondent ('R1') was a director. To minimise start-up costs for the venture, the appellants allowed their medical and other equipment ('the goods') to be used at the premises without charge. Owing to various problems, the joint-venture came to an end, but owing to a dispute over the distribution of the profits from the venture, the appellants were not allowed to enter the premises to take back the goods; neither was a demand from the appellants' solicitor for the goods to be returned heeded. The appellants applied by way of an originating summons ('OS') for, amongst other things, a mandatory injunction directing the respondents to jointly or severally surrender/deliver up the goods. The judicial commissioner ('JC') dismissed the OS holding, inter alia, that the dispute between the parties required to be determined in a full trial with witness testimony and not by way of an OS. The JC, however, did not direct the OS to be converted into a writ action, nor did she call for oral evidence at the OS hearing. In the instant appeal, the appellants submitted that the OS should have been allowed because they had, on unchallenged documentary evidence, proven their ownership of the goods which the respondents had no right to detain at the premises.

Held, unanimously allowing the appeal, setting aside the High Court's decision and granting the mandatory injunction prayed for in the OS against R3:

(1) From the affidavit and documentary evidence, the appellants had, on balance of probabilities, proven that they were the owners of the goods and it was not disputed that the goods were brought to the premises for the smooth operation of the joint venture business and to minimise the start-up costs. The respondents did not adduce any evidence to dispute the appellants' ownership of the goods. Merely saying that the goods were used in the business operation of the joint-venture entity did not change the status of ownership of the goods unless the change was specifically agreed upon by the owner of the goods (see paras 18–19).

(2) The JC should have unhesitatingly granted the mandatory injunction sought by the appellants to compel the respondents to return the goods. Instead, the JC had taken into account irrelevant considerations to dismiss the OS. R3, who had possession and control of the goods by virtue of being the owner of the premises, was obliged to return the goods to the appellants even though R3 was not a party to the joint venture business agreement (see paras 23–24 & 27).

[Bahasa Malaysia summary

Perayu-perayu telah bersetuju untuk memasuki perniagaan usaha sama, atas dasar pembahagian keuntungan yang sama rata, dengan responden kedua ('R2') dengan membuka klinik dan pusat kesihatan di premis ('premis') yang dimiliki oleh responden ketiga ('R3') di mana responden pertama ('R1') adalah pengarah. Untuk meminimumkan kos permulaan untuk usaha sama tersebut, perayu membenarkan peralatan perubatan dan lain-lain mereka ('barang') digunakan di premis tanpa perbelanjaan. Disebabkan oleh pelbagai masalah, usaha sama tersebut telah ditamatkan, tetapi disebabkan pertikaian mengenai pengagihan keuntungan daripada usaha sama tersebut, perayu tidak dibenarkan memasuki premis untuk mengambil semula barang tersebut; permintaan daripada peguamcara perayu-perayu supaya barang tersebut dipulangkan tidak diendahkan. Perayu memohon melalui saman pemula ('SP') untuk, antara lain, injunksi mandatori yang mengarahkan responden untuk menyerahkan/menghantar barang secara bersama atau berasingan. Pesuruhjaya kehakiman ('PK') menolak SP dengan memutuskan, antara lain, bahawa pertikaian antara pihak perlu ditentukan dalam perbicaraan penuh dengan keterangan saksi dan bukan melalui SP. PK, bagaimanapun, tidak mengarahkan SP ditukar kepada tindakan writ, dan juga tidak meminta keterangan lisan pada pendengaran SP. Dalam rayuan semasa, perayu-perayu berhujah bahawa SP sepatutnya dibenarkan kerana mereka telah, atas keterangan dokumen yang tidak dicabar, membuktikan pemilikan mereka ke atas barang-barang yang responden tidak berhak untuk menahan di premis tersebut.

Diputuskan, sebulat suara membenarkan rayuan, mengetepikan keputusan

Mahkamah Tinggi dan memberikan injunksi mandatori yang dimohon dalam SP terhadap R3:

(1) Daripada afidavit dan keterangan dokumen, perayu telah, atas imbangan kebarangkalian, membuktikan bahawa mereka adalah pemilik barang dan tidak dipertikaikan bahawa barang tersebut dibawa ke premis untuk melancarkan perniagaan usaha sama dan untuk meminimumkan kos permulaan. Responden tidak mengemukakan sebarang keterangan untuk mempertikaikan pemilikan perayu ke atas barang tersebut. Sekadar mengatakan bahawa barang tersebut digunakan dalam operasi perniagaan entiti usaha sama tidak mengubah status pemilikan barang melainkan perubahan tersebut dipersetujui secara khusus oleh pemilik barang (lihat perenggan 18–19).

(2) PK sepatutnya tanpa ragu-ragu memberikan injunksi mandatori yang diminta oleh perayu untuk memaksa responden memulangkan barang tersebut. Sebaliknya, PK telah mengambil kira pertimbangan yang tidak relevan untuk menolak SP. R3, yang mempunyai pemilikan dan kawalan ke atas barang-barang tersebut kerana menjadi pemilik premis, diwajibkan memulangkan barang-barang tersebut kepada perayu-perayu walaupun R3 bukan pihak dalam perjanjian perniagaan usaha sama (lihat perenggan 23–24 & 27).]

Cases referred to

Perbadanan Kemajuan Negeri Selangor v Teo Kai Huat Building Contractor [1982] 2 MLJ 165; [1982] CLJ Rep 257, FC (refd)
TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd [1985] 2 MLJ 45, FC (refd)
Tinta Press Sdn Bhd v Bank Islam Malaysia Bhd [1987] 2 MLJ 192; [1987] 1 CLJ 447, SC (refd)

Legislation referred to

Rules of Court 2012 O 7, O 28, O 45 r 5, O 92 r 4
Specific Relief Act 1950 ss 4, 9, 50, 51, 53

Appeal from: *Eternal Wellness Sdn Bhd dan satu lagi lwn Derrick Ng Keng Lin dan lain-lain* [2022] MLJU 130 (High Court, Kuala Lumpur)

Mohammad Emir Feizal bin Mohammad Fakhrunnasri (Rajes Hisham Rahim & Gopal) for the appellant.
Reuben Ong (Kevin & Co) for the respondent.

Che Mohd Ruzima JCA:

INTRODUCTION

[1] The appellants, Eternal Wellness Sdn Bhd and Eternal Clinic Sdn Bhd, (the plaintiffs in the High Court) are appealing against the decision of the Kuala Lumpur High Court dated 13 December 2021 wherein the learned judicial commissioner (the LJC) dismissed the appellants' originating summons dated 21 July 2021 (the appellants' OS) filed against the respondents, Derrick Ng Keng Lin, Ong Gaik Thiang and Go Maximont Sdn Bhd (the defendants in the High Court) without any order as to costs.

[2] For ease of reference, the appellants will be individually referred to as A1 and A2, and the respondents individually will be referred to as R1, R2 and R3.

THE APPELLANTS' OS

[3] In summary, the appellants' OS prayed for the following orders:

(a) the appellants prays for a mandatory injunction order for the respondents to jointly or severally surrender the appellants' goods which are listed in the Appendix A of the appellants' OS (the appellants' goods), which are presently kept in the premise at No 120, Jalan Maarof, Bangsar, 59000 Kuala Lumpur (the said premise) to the appellants within 72 hours or any period of time determined by the court;

(b) if the court order allowing the appellants' OS is unable to be served on the respondents after two attempts of service, the appellants together with the court's bailiff and/or police are allowed to force open the said premise to enter and to recover the appellants' goods;

(c) the appellants are allowed to apply for a committal order if the respondents disobey any orders granted by the court; and

(d) the appellants prayed for the costs to be borne by the respondents.

BRIEF BACKGROUND FACTS

[4] It is undisputed that in or around 2017, Chan Chean Gaik ('CCG') who is a director and the majority shareholder of the A1 and A2 had agreed with R2 to collaborate in a joint venture to open a branch of a clinic and a wellness centre on the profit-sharing basis of 50–50 ('the JV business'). The operation of the JV business was to be at the said premise owned by R3 where R1 is the director. However, R2 agreed that the said premise is to be used for the JV business. There was no joint venture agreement entered in writing by the parties.

[5] To give effect to the JV business, two new entities were formed, namely Eternal Clinic Bangsar Sdn Bhd ('EC Bangsar') and Eternal Wellness (Bangsar) Sdn Bhd ('EWBSB'). It was agreed that CCG is the director and shareholder with a 50% shareholding of EC Bangsar and EWBSB. To protect the interest of the R2 in the JV business, it was agreed that R1, who is the son of R2 is to be appointed as a director of EC Bangsar and EWBSB and, was also given 50% shares in EC Bangsar and EWBSB without any consideration.

[6] For the smooth operation of the EC Bangsar and EWBSB at the said premise and to also minimise the starting of business costs, the appellants' goods, which are owned by the appellants, were allowed to be used at the said premise without any operating charges or rental charges to EC Bangsar and EWBSB. The appellants also have taken insurance to insure the appellants' goods present in the said premise.

[7] The JV business suffered a hiccup. What was arranged before did not work out, and what was agreed between the parties has fallen apart. Circa the end of year 2020, discussion was initiated by CCG to terminate the JV business and it was agreed that the operation of EC Bangsar and EWBSB would end on 31 January 2021. It was also agreed that the appellants' goods to be taken out from the said premise.

[8] Anyhow, in January 2021 dispute arose as to the distribution of the JV business profit. Consequently, the appellants were not allowed to enter into the said premise to take back the appellants' goods. The appellants, via their solicitors' letter dated 4 February 2021 demanded the return of the appellants' goods. The respondents have failed or refused to comply with the appellants' demand.

[9] Via the appellants' notice of motion dated 5 January 2022, the respondents had agreed to enter into a consent interim preservation order dated 24 January 2022 wherein the respondents agreed to preserve and to take care of the appellants' goods whilst waiting for this present appeal to be heard.

THE LJC DECISION

[10] The LJC dismissed the appellants' OS on the following grounds:

1) Penubuhan Syarikat Plaintif-Plaintif itu sendiri, Penubuhan Syarikat ECBSB dan EWBSB perlu diperjelaskan dalam perbicaraan penuh dan sama ada berkaitan dengan Perniagaan JV.

2) Apakah persefahaman di antara Plaintif-Plaintif dan Defendan-Defendan dalam perniagaan ini [merujuk kepada barangan tersebut dan juga sama ada dikontra dengan sewaan]. Jika dirujuk kepada kertas kausa terdapatnya persefahaman diantara pihak-pihak berkaitan dengan

barangan tersebut yang mana tujuan pihak-pihak tersebut adalah di atas dasar kelancaran operasi Perniagaan JV di premis tersebut dan untuk mengurangkan kos permulaan Perniagaan JV.

3) Perkara di atas adalah diantara isu yang Mahkamah berpendapat bahawa perlunya penjelasan secara memanggil saksi oleh kedua-dua pihak dan permohonan ini tidak sepatutnya dibuat secara Saman Pemula.

4) Mahkamah juga berpendapat bahawa terdapatnya hubung kait Saman Pemula ini dengan Guaman 289 di Mahkamah Tinggi Shah Alam yang masih pending.

Having referred to the decision of Supreme Court in *Tinta Press Sdn Bhd v Bank Islam Malaysia Bhd* [1987] 2 MLJ 192; [1987] 1 CLJ 447 and Federal Court in *TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd* [1985] 2 MLJ 45, the LJC is of the view that it is inappropriate for the court to exercise its discretion to allow the appellants' OS at that stage.

THE APPEAL

[11] The appellants listed ten reasons in the memorandum of appeal. Before us, learned counsel for the appellants argued five points as follows:

(a) the LJC erred in failing to consider that the appellants, on the balance of probabilities, had proven its ownership of the appellants' goods;

(b) the LJC erred in dismissing the appellants' OS based on irrelevant justification;

(c) the LJC erred in failing to consider that the respondents have no justification to withhold the appellants' goods at the said premise;

(d) the LJC erred in failing to consider that the respondents have an obligation to return and/or surrender the appellants' goods after the appellants demanded for it; and

(e) the LJC erred in dismissing the appellants' OS without calling for oral evidence to be given in the OS or for the matter to be converted to a writ action since the LJC has the power to do so under the law.

OUR DECISION

[12] The crux of the appellants action against the respondents in the appellants' OS is to get back the appellants' goods which were used in the JV business. After the JV business closed, the said goods were stranded in the said premise owned by R3. The respondents refused to allow the appellants to enter the said premise to take back the appellants' goods on the reason that there is a pending dispute related to the respondents' claim in the JV business.

[13] As to the evidence, CCG in her affidavit in support ('AIS') dated 21 July 2021 that was filed together with the appellants' OS averred that the appellants' goods listed in Appendix A of the appellants' OS were brought by her to the said premise in order that the said goods can be used in the JV business. See Appendix A at p 9, encl 27. Be that as it may, CCG had listed down all the ten items owned by A1 and the two items owned by A2 in her AIS as follows:

The items owned by A1:

No.	Tarikh Invois/Pembelian	Butir-Butir Barangan	Kuantiti (Unit)
1.	3.5.2011	Infusion System	1
2.	3.5.2011	Pristine System	1
3.	15.1.2013	Ozone generator machine	2
4.	12.11.2012 & 29.4.2013 (dua bayaran ansuran)	Haemoseis 256 Compact (Portable) 3 - Dimensional Vasculography Monitoring & Imaging System (Model: RGS-COMPACT; Serial No.: 1303016SCL)	1
5.	5.10.2012	Life Blood Analysis Machine Comprises of 16X 1000 Microscope, CPU plus Table Set	1
6.	18.11.2013	Nano-Hybrid Air-Purifying System (Negative Ions, Nano-Hybrid HEPA, UV PCO) (Model No. PurAir400A)	1
7.	27.11.2015	Drive Mflex with Pumphead Mflex (Model No.CP/MF/AO/P-07528-10 & CP/P- 07516-10)	
8.	22.1.2015	PRP Centrifuge Machine (Batch No. FPPJ0111078)	1
9.	20.6.2014	Motorised Hospital Bed	1

The items owned by A2:

No.	Tarikh Invois/Pembelian	Butir-Butir Barangan	Kuantiti(Unit)
1.	23.2.2017	GE Logiq P5 Fully Digital Colour Doppler 4D Ultrasound System (Model/Serial No. 51616SU1)	1
2.	14.8.2019	UVLRx Machine (Model: UVL 1500 /Serial No.2016-1500-066)	1

[14] To support her averments as to the ownership of the appellants' goods, CCG had exhibited the copies of the invoices, proof of purchases, and delivery order dated 21 November 2017 from A1 to EC Bangsar and the photographs

of the goods claimed to be owned by A1, collectively marked as exh 'CCG3' and for the goods owned by A2 in the exhibit marked 'CCG4'. See para 9 of the AIS at pp 35–36, encl 16.

[15] Not only that, CCG had also exhibited all goods belong to EC Bangsar as at 31 March 2021 and EWBSB as at 31 December 2020 in her AIS. The said goods were collectively marked as exh 'CCG5'.

[16] Meanwhile, in the respondents' affidavit in reply (AIR) affirmed by R1, who is also the son of R2 and one of the R3's directors, had averred that at all material time the respondents had been informed and/or represented by CCG that the goods listed in Appendix A by the appellants in the appellants' OS belong to CCG and not the appellants. R1 further averred that he did not have any knowledge as to the appellants' claim that the goods were rented to EC Bangsar and EWBSB since there was no document to prove the said claim. Anyway, R1 admitted that the goods in Appendix A were brought in for the JV business operations. Finally, R1 said that he was advised by the respondents' counsel that EC Bangsar was the owner and/or owned beneficial interest of the goods in Appendix A as they were used in the JV business operation. See para 14 of the respondents' AIR at pp 53–54, encl 16.

[17] As regard to the delivery orders dated 21 November 2017 from A1 to EC Bangsar in exh 'CCG3' and exh 'CCG4', R1 claimed that they were forged documents and strictly disputed the documents. See paras 15–16 of the respondents' AIR at pp 54–55, encl 16.

[18] From the affidavit evidence adduced, it is not disputed that the appellants' goods were brought into the said premise by CCG for the smooth operation of the EC Bangsar and EWBSB and to also minimise the starting of business costs. As to the ownership, the appellants had exhibited all relevant documents that can prove that they are the owners of the appellants' goods. All invoices and/or delivery orders exhibited in 'CCG3' and 'CCG4' are under the name of A1 and A2 respectively. In contrast, there is not an iota of evidence brought by the respondents to show otherwise. Therefore, we find that the respondents' averment affirmed by R1 that the appellants' goods were owned by CCG and not the appellants had no leg to stand on. The same goes to the R1 averment that they were advised by their counsel that EC Bangsar was the owner and/or owned beneficial interest of the goods by virtue of the usage of the goods in the JV business operation also cannot stand. By merely saying that the goods were used in the business operation of EC Bangsar did not change the status of ownership of the goods unless specifically agreed upon by the owner of the goods.

[19] As to the delivery orders dated 21 November 2017 tendered in exh

'CCG3' and exh 'CCG4' by the appellants, which were strictly disputed by the respondents and were alleged to be forged documents, we find that, besides saying what had been said in the respondents' AIR, there is no single evidence put forward to dispute the appellants' claim on the goods or to prove the allegation of forgery. Looking at the delivery orders dated 21 November 2017, there are two signatories appearing on it. At the very least, the respondents can bring some evidence that they were false signature or the documents were not signed by them or their representative. Be that as it may, we are of the opinion that the delivery orders dated 21 November 2017 are not really important or relevant documents to the appellants' claim. This is because, the undisputed fact shows that the EC Bangsar and EWBSB are not the owner of the said goods. We find that, on balance of probability, the appellants have sufficiently proved that the appellants' goods listed in the Appendix A belong to them.

[20] The evidence also shows that the appellants via their solicitors' letter dated 4 February 2021 that can be seen at pp 98–99 encl 17, had among others, demanded for the appellants' goods to be returned to the appellants after R1 and/or R2 had denied access to the said premise. After being ignored, the appellants instructed their counsel to issue another notice of demand dated 10 March 2021 as at pp 118–119 encl 17.

[21] Despite the demand letters, the respondents failed to return the appellants' goods. Then, the appellants initiated the appellants' OS. From the intitulement stated in the appellants' OS, it is clear that the appellants had alerted the court and the respondents as to the appellants' cause of action. As to the law, the appellants specifically refer to ss 4, 9, 50, 51 and 53 of the Specific Relief Act 1950 ('the SRA 1950') and as to the procedure, the appellants refer to O 7, O 28, O 45 r 5, 92 r 4 of the Rules of Court 2012 ('the ROC 2012').

[22] In gist, the appellants' action against the respondents is to get back its own property. How do they do it? Section 4 of the SRA 1950 provides that:

> 4 Specific relief how given
>
> Specific relief is given —
>
> (a) by taking possession of certain property and delivering it to a claimant;
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> (b) by ordering a party to do the very act which he is under an obligation to do;
>
> (c) by preventing a party from doing that which he is under an obligation not to do;
>
> (d) by determining and declaring the rights of parties otherwise than by an award of compensation; or
>
> (e) by appointing a receiver.

Meanwhile, s 9 of the SRA 1950 provides that:

> 9 Recovery of specific movable property
>
> A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the law relating to civil procedure.

To compel the return of the goods, the appellants moved the court to exercise its discretion under s 53 of the SRA 1950 which provides as follows:

> 53 Mandatory injunctions
>
> When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

[23] As it is our finding that the appellants through the contemporaneous documents have proved its ownership over the goods as listed in the Appendix A, it is necessary to compel the respondents to return the goods to the appellants. The LJC should unhesitatingly exercise her discretion to grant an injunction to prevent the breach complained of against the respondents and to compel the respondents to return the appellants' goods. We refer to the Federal Court decision cited by learned counsel of the appellant in the case of *TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd* [1985] 2 MLJ 45 where it was stated that:

> The grant of a mandatory injunction is entirely discretionary. Every case must depend essentially upon its own particular circumstances. *It is a jurisdiction to be exercised sparingly and with caution but in a proper case unhesitatingly*. When the court decides to grant such an injunction then the court must see to it that that person against whom it is granted knows exactly what he has to do. (Emphasis added.)

[24] On the same note, we also agree with learned counsel for the appellants' submission that the LJC had considered irrelevant justification in her findings to dismiss the appellants' OS. The issues raised by the respondents in their AIR such as, the issues of the incorporation of EC Bangsar and EWBSB, the rental or the ownership of the said premise, the parties to the JV business, CCG fiduciary duty towards EC Bangsar, CCG's refusal to supply the statements of account of JV Business when appellants' OS with the Shah Alam High Court Suit BA-22NCVC-289–07 of 2021 (Suit 289) which involves the R1, R2 and EC Bangsar claiming against CCG and the appellants are irrelevant to the appellants' cause of action that was raised in the appellants' OS, that is, a claim for the return of the appellants' goods kept in the said premise and wrongfully withheld by the respondents.

[25] As regards to the Suit 289, upon perusing the said suit that had been exhibited as exh 'NKL3' in the respondents' AIR, we find that not a single paragraph in the statement of claim refer to the appellants' goods and not a single prayer claims the ownership or beneficial interest in whatever form of the appellants' goods. It is also pertinent to note that learned counsel for the appellants in his submission had informed us that Suit 289 had been struck off by the Shah Alam High Court. Thus, any issue raised regarding Suit 289 is a red herring.

[26] Back to the appellants' appeal, we find that the appellants have successfully proved that the goods in the said premises owned by R3 belong to the appellants. In the case of *Perbadanan Kemajuan Negeri Selangor v Teo Kai Huat Building Contractor* [1982] 2 MLJ 165; [1982] CLJ Rep 257 which was cited to us by counsel for the appellants, the Federal Court had made the following observation:

> With reference to an action in detinue, *Bullen & Leake* (12th Ed): No 5 has stated at p 358:
>
> > An action lies for the specific recovery of personal chattels wrongfully detained from the person entitled to the possession of them, and also for damages occasioned by the wrongful detainer (3 Bl Com 151). The technical name of this action is 'Detinue'. The gist of the action is the wrongful detention of goods, and, in general, therefore, it is an action for a wrong independent of contract, and is founded on tort (see *Bryant v Herbert* (1878) 3 CPD 389); there must be 'some definite act or deliberate withholding as a necessary preliminary to the arising of this cause of action' (*Clayton v Le Roy* [1911] 2 KB 1031 at p 1048).
>
> And at p 359 speaking of right of action it is stated that:
>
> > To support the action, the plaintiff must have the right to the immediate possession of the goods at the time of commencing the action, arising out of an absolute or a special property;
> >
> > The injurious act being the wrongful detention of the goods, and not the original taking or obtaining of the possession, it is immaterial whether they were obtained by the defendant by lawful means, as by a bailment or finding, or by a wrongful act, as by a trespass or conversion. The usual evidence of the detention is that the defendant, having the possession or control over the goods, does not deliver them to the plaintiff when demanded (*Jones v Dowle* (1841) 9 M & W 19). Where there was neither demand nor refusal, no action lay (*Clayton v Le Roy*).

[27] With that, we are of the opinion that R3 who has the possession and control of the appellants' goods by virtue of being the owner of the said premises is obliged to return the said goods to the appellants even though R3 was not the party to the JV business agreement. The LJC should exercise her

discretion to order a mandatory injunction as prayed by the appellants against R3.

CONCLUSION

[28] Based on the above, we find that there is merit in the appellants' appeal that warrant our appellate intervention. We unanimously allow the appellants appeal. The High Court order is set aside. We grant order in terms of encl 1 of the appellants' OS as against the R3 only. The time frame of 72 hours in para (1) of the appellants' OS is extended to Friday, 12 August 2022 on or before 5pm. We make no order as to cost.

Appeal allowed; High Court order set aside; and mandatory injunction against R3 granted.

Reported by Ashok Kumar